

# 10★Eight

In Service for Arkansas Law Enforcement

Arkansas  
Attorney General  
Mike Beebe

Volume 11, Number 1

May 2003



*Dear Ten-Eight Reader:*

As Arkansas' new Attorney General, I'm very pleased to present the first copy of my Ten-Eight Newsletter. As most of you already know, Ten-Eight is a service from the Attorney General's office for law-enforcement officers to keep you updated on the latest trends in our criminal-justice system. I hope that you will find it to be useful and informative as you continue your courageous service to others.

As the Attorney General of Arkansas, the needs of law enforcement and the criminal-justice system in our state are of paramount importance to me. Your devotion to duty and your regard for the safety of Arkansas families make this state a better place for all of us. I applaud your commitment and dedication in this effort, especially during these trying times when so many departments are stretched thin because of Homeland Security concerns and loss of personnel to the military.

I look forward to working with you as, together, we continue a partnership to work for the common good of the people of our state. Please feel free to call on me if I can be of assistance in any way.

*Sincerely,*

Mike Beebe



## H E L P E R ' S H I G H L I G H T

The "Helper's High" is a phrase coined by Alan Luks, Executive Director of Big Brothers Big Sisters of New York City, referring to feelings of euphoria generally experienced by volunteers. Volunteers describe these feelings as comparable to a "runner's high." Their acts of helping others cause positive physiological and emotional effects. The helper's high is believed to release endorphins and natural hormones that improve mood and boost immunity. Volunteerism enhances self-esteem, increases an overall sense of well-being, and lowers stress.

In each upcoming issue of Ten-Eight, we will honor law-enforcement officers who volunteer their time to help others in Arkansas communities.

This month, we are proud to feature Officer Bill Cobb of the Little Rock Police Department (LRPD), a 30-year veteran of the LRPD. He is a passionate community activist, dedicated to protecting the quality of life for those in the metropolitan area of Little Rock.

In addition to his diligent and resolute efforts within the LRPD, Officer Cobb routinely attends Special Olympics and actively participates in neighborhood-watch meetings. He also finds time to escort

members of athletic teams and a host of political dignitaries to various events and functions. Officer Cobb personifies excellent citizenship among his personal neighbors and his professional peers.

The Attorney General's Office is proud to feature Officer Cobb as one of our initial stars to shine in the spotlight of this new feature.

*(Continued in Page 2)*

## What's Inside:

Deployment Affecting	
Arkansas Law Enforcement .....	2
Highlights from the General Assembly .....	3
Gilmore v. State .....	4
Attorney General Opinions .....	4
Changes in the	
Concealed Handgun Law .....	5
Davis v. State .....	5



## DEPLOYMENT AFFECTS ARKANSAS LAW-ENFORCEMENT AGENCIES

# AS OFFICERS AND SOLDIERS PROTECT AND SERVE AMERICA

BY ALICIA BANKS, *Prevention and Education Instructor*

Law-enforcement agencies nationwide are feeling the effects of the recent war in Iraq. Deployments of military reservists and staffing departures to burgeoning homeland-security programs have caused attrition rates to soar, straining police departments and sheriff's offices all across America.

According to the national Police Executive Research Forum ([www.policeforum.org](http://www.policeforum.org)), 44 percent of 976 American law-enforcement agencies have already lost officers due to military deployments. More losses are anticipated as troops continue to be activated. Arkansas' law-enforcement agencies have also seen officers deployed to Iraq, and more losses may occur.

Many officers who are departing agencies possess very specialized training. Another long-range concern of agencies includes the depletion of funds previously reserved exclusively for new hires. Legal restrictions require that law-enforcement slots vacated for military reasons must be retained so that soldiers may resume employment immediately upon their return from military assignments.

Since the culmination of the Cold War in 1989, military-reserve deployments have increased over 1300 percent. Military personnel gravitate toward law-enforcement posts as a natural progression. Until September 11, 2001, the "war on drugs" was the foremost national priority for police agencies. Now, terrorism is the primary focus of law-enforcement agencies. Sociologists predict that terrorism, a weak economy, and a tight job market may all pose threats to cities nationwide.

To alleviate some of the problems, national contingency plans for law-enforcement agencies include mandatory overtime, interdepartmental transfers, temporary reassignments, and recruitment of volunteers for various official duties. Fargo, North Dakota's Police Department has already begun to allow citizens to volunteer as police-station clerks. To date, no similar contingency plan has been implemented within law-enforcement agencies in Arkansas.

Civilian volunteers in many other states are currently being trained through the Volunteers in Public Service program (VIPS), a U.S. Department of Justice effort, in alliance with the

International Association of Chiefs of Police (IACP). This proactive program prepares civilian volunteers to assist law-enforcement agencies as needed. The VIPS program seeks to share best procedural practices, as well as to recruit, train, and engage citizen volunteers in various organizational roles. These roles include promoting volunteerism in policing; creating a searchable national database of law-enforcement-based volunteer programs that will allow prospective volunteers to select specific agencies

that they prefer to assist; providing support and technical assistance to law-enforcement agencies as they create new local VIPS programs; and developing an Internet resource Web site.

For more information on VIPS programs, call 800-THE-IACP, or email: [info@policevolunteers.org](mailto:info@policevolunteers.org)

**"44 percent of 976  
American law-enforcement  
agencies have already lost  
officers due to military  
deployment"**

### HELPER'S HIGHLIGHT *(Continued from front page)*

We also honor Officer Leslie Dean Scroggins, a 14-year veteran of the Jacksonville Police Department (JPD). Currently, Scroggins is a member of the Patrol Division of the Community Oriented Police Station (COPS). He is uniquely committed to Jacksonville, as it is his birthplace.

Since 1995, Officer Scroggins has been a key player in the Special Olympics Law-Enforcement Torch Run. His participation is motivated by his admiration for the

children involved in Special Olympics.

Community involvement is a family affair for the Scroggins household. He, his wife, and their two daughters regularly participate in community events that feature local children as dancers, gymnasts, and soccer players. Officer Scroggins also helps the children of his community as a member of the Fraternal Order of Police's annual "Shop with a Cop" Program. This holiday-helper program allows needy families to participate more fully in celebrating

Christmas. Lucky children are each given \$100 to spend on a shopping spree with local officers as their assistant shoppers.

If you know any officer who volunteers his or her time to improve the lives of Arkansans, please contact Alicia Banks in the Community Relations Division of Attorney General Mike Beebe's Office at 1-800-448-3014 or 501-682-3646.

Look for your peers in upcoming issues as we honor their volunteerism in our communities.

# Highlights from the 84th General Assembly

The regular session of the 84th General Assembly has come to a close. Several measures of particular interest to law enforcement and prosecutors passed and were signed into law. The summaries below offer a glimpse of some of the Acts passed by the General Assembly. For more information about these newly enacted laws, log onto [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

## **Act 110 ...**

amends ACA §5-4-203, pertaining to consequences of failure to pay criminal fines. Specifically, it decreases the amount of time a defendant would spend in jail for failure to pay a fine or court costs from one day per \$10 of the total fine or court costs, to one day per \$40 of the fine or court costs.

## **Act 129 ...**

amends ACA §5-65-109 to allow sentencing for DWI to proceed after a 15-day-notice period if the receipt of the pre-sentence report has been delayed by the defendant.

## **Act 135 ...**

ensures that property seized by municipal law-enforcement agencies and the monies gained from the sale of the property are deposited in those cities' and towns' treasuries, as opposed to being sold at auction by the sheriff of those particular counties and deposited in county treasuries.

## **Act 213 ...**

exempts non-elected municipal and county employees' home addresses from public records under FOIA.

## **Act 219 ...**

prohibits the use of a cell phone while operating a school bus. The Act exempts emergency calls, including those to a police department or other emergency personnel.

## **Act 245 ...**

adds class A and B controlled-substance felonies to the definition of "target group" for community correction facility placement.

## **Act 268 ...**

requires the Office of Driver Services to review the waiver of driver's license age restrictions after a complaint filed by a law-enforcement official, city attorney, or prosecuting attorney. Upon the receipt of a complaint, the licensee is entitled to a hearing to review the need for the waiver.

## **Act 277 ...**

amends current law to allow pediatric products containing ephedrine to be purchased by persons under eighteen years of age.

## **Act 330 ...**

provides for public disclosure of registration for Level 3 or Level 4 sex offenders effective September 1, 2003. It also precludes this same group of sex offenders from residing within 2,000 feet of an elementary or secondary school or day-care facility.

## **Act 333 ...**

amends the property-damage amount required to report vehicle accidents from a \$500 threshold to a \$1,000 threshold.

## **Act 355 ...**

expands claims coverage to survivors of officers killed in the line-of-duty from covering those killed by criminal action to those killed by criminal or negligent action or as the result of engagement in exceptionally hazardous activity.



## GILMORE v. STATE:

# PURCHASE OF SUSPICIOUS ITEMS IN SUSPICIOUS QUANTITIES MAY NOT BE ENOUGH FOR AN ARREST

BY CLAY HODGES, *Assistant Attorney General*

The Arkansas Court of Appeals recently reversed and dismissed a northwest Arkansas couple's convictions for possessing drug paraphernalia with the intent to manufacture methamphetamine, holding that the prosecution failed to present sufficient evidence of their guilt. *Gilmore v. State*, 79 Ark. App. 303, 87 S.W.3d 805 (2002). An off-duty officer, Stacy Bohanhan, was shopping at a Springdale Wal-Mart, when the loss-prevention officer, who was also a law-enforcement officer, notified her that the Gilmores were purchasing seven boxes of antihistamine tablets, four cans of starting fluid, a can of butane, air freshener, and two propane bottles. Bohanhan contacted an on-duty officer, and, when the Gilmores came out of the store, they were detained and ultimately arrested.

On appeal from their conviction for possessing drug paraphernalia with intent to manufacture, the Arkansas Court of Appeals reversed and dismissed, holding that the evidence of their guilt was legally insufficient. In reaching that conclusion, the Court of Appeals noted that the State's expert witness, the drug-task-force supervisor, gave imprecise testimony about the intended use of the items the Gilmores had purchased. In describing each of the items they purchased, the supervisor testified that he suspected that they were going to use them to manufacture methamphetamine. In addition, the supervisor noted that there were three main ways to manufacture methamphetamine, but could not say which method he thought the Gilmores were using. He concluded that "all of the evidence ... together gives rise to a suspicion that they are cooking methamphetamine. I suspect them of cooking methamphetamine based upon what I see before me today."

Absent any other evidence indicating that they were manufacturing methamphetamine, the Court of Appeals concluded that the Gilmores' convictions could not stand. Nonetheless, the Court did state that "[w]e do not fault the police officers in this case. Quite clearly, they had reasonable suspicion to justify detaining [the Gilmores]." Nevertheless, suspicion alone will not be sufficient to sustain a conviction.

When faced with a similar situation, it is imperative that law-enforcement officers investigate further because the lack of additional evidence tying the Gilmores to manufacturing methamphetamine was fatal to the prosecution of this case.

As the facts of the case allow, officers should conduct additional investigation or surveillance, obtain permission to search, take statements, or obtain a search warrant. While the Court has indicated that the purchase of suspicious items in suspicious quantities will justify an investigative detention, more evidence is needed for a successful prosecution.



## OPINIONS OF THE ATTORNEY GENERAL

### OPINION NO. 2003-002

## A CITY ATTORNEY'S POWER TO ISSUE SUBPOENAS

**Question 1:** Does a city attorney have the power to issue subpoenas for medical records in relation to criminal cases, including tests that determine a criminal defendant's blood-alcohol concentration?

**Opinion:** Yes, pursuant to A.C.A. § 16-43-212, unless some other law, such as the Hospital Records Act, restricts access to the records.

**Question 2:** Does a city attorney have the power to issue subpoenas for telephone records in relation to criminal cases?

**Opinion:** Generally yes, unless a specific restriction applies.

**Question 3:** Does a city attorney have the power to issue subpoenas for any type of record that could be used in a criminal trial if such record were a relevant piece of evidence in a criminal case that was being prosecuted?

**Opinion:** Generally yes, subject to specific restrictions in other laws.

### OPINION NO. 2003-001

## USE OF POLICE OFFICERS AS SCHOOL RESOURCE OFFICERS

**Question:** May the City of Lexa legally assign a police officer as a resource officer at the Barton-Lexa School campus, which is located in the unincorporated community of Barton in Phillips County?

**Opinion:** No. An incorporated town may not assign an on-duty police officer to serve as a school-resource officer, presumably to perform law-enforcement duties, in a school located outside the town's geographical limits. However, an on-duty Phillips County deputy sheriff might serve as the school's resource officer as long as his or her duties involved only traditional police functions.





## ACT 348 OF 2003 –

# CHANGING THE LAW CONCERNING A LAW-ENFORCEMENT OFFICER'S ELIGIBILITY TO CARRY CONCEALED HANDGUNS

BY JEFF R. PRIEBE, *Assistant Attorney General*

Recently, Senate Bill 155 became Act 348 of 2003. Once it becomes effective, this Act will amend certain portions of Arkansas Code Annotated § 12-15-202, the state law regarding the eligibility of certified law-enforcement officers and retired law-enforcement officers to carry concealed handguns.

The Act changes existing law by requiring, among the other requirements outlined in § 12-15-202(a), certified law-enforcement officers to carry a badge and appropriate written identification in order to carry a concealed handgun. Previously, the carrying of a badge was not a requirement of certified law-enforcement officers. The Act also amends existing law by removing the section that subjects certified law-enforcement officers to state-law prohibitions. Thus, when the Act becomes effective, certified law-enforcement officers who meet the requirements of § 12-15-202(a) will not be subject to state-law prohibitions against carrying concealed handguns.

The Act also changes the law regarding the eligibility of retired law-enforcement officers to carry concealed handguns. As with certified law-enforcement officers, the Act removes the language of the existing law that subjects retired law-enforcement officers to state-law prohibitions. Thus, when the Act becomes law, retired law-enforcement officers who meet the requirements of § 12-15-202(b) will not be subject to state-law prohibitions against carrying concealed weapons. The language of the Act also requires the Director of the Arkansas State Police to keep a record of all retired Arkansas State Police officers who are currently authorized to carry a concealed handgun and provides that the Director can revoke any authorization upon a showing of good cause.

The Act also adds a section to Arkansas Code Annotated § 12-15-202 that excludes certified law-enforcement officers and retired officers from being subject to the prohibitions and limitations outlined in Arkansas Code Annotated § 5-73-306, which governs the carrying of concealed handguns into specified places. These changes to Arkansas Code Annotated § 12-15-202 will effect a previous Attorney General's Opinion on this issue. *See* Attorney General Opinion No. 2002-341.



## DAVIS v. STATE:

# COMBINATION OF FACTORS MAY BE ENOUGH TO ELIMINATE EXPLANATIONS OF INNOCENCE

BY LAUREN HEIL, *Assistant Attorney General*

In *Davis v. State*, the Arkansas Supreme Court held that El Dorado police officers had a reasonable suspicion to stop and frisk a man they saw engaged in a hand-to-hand transaction in a neighborhood notorious for illegal-drug activity. *Davis* is significant because it holds that an officer does not need to eliminate innocent explanations for the conduct he or she observes before reasonably detaining an individual suspected of illegal activity.

During the afternoon of March 9, 1999, Detectives Billy White and Brandon Ivy were on bicycle patrol near Detroit and Roosevelt Streets in El Dorado, an area about which the police department had received several complaints of drug activity. Detective White saw five men in the yard of a vacant house on a corner of that intersection. Around the side of the house, Detective White saw Davis and another man standing side-by-side "as though they were exchanging something." When the two men saw the detectives approaching, they walked away hurriedly. Detective White pursued one of the men into the vacant house, while Detective Ivy stopped Davis, who acted "fidgety and nervous" and provided a false name and birth date. During the pat-down search that followed, Detective Ivy discovered a crack pipe and cocaine in Davis's pockets.

Davis first appealed the denial of his motion to suppress the crack pipe and cocaine to the Court of Appeals, which concluded that, because the officers did not actually see drugs being exchanged – and therefore, could not completely rule out the possibility of innocent conduct – they lacked a reasonable suspicion to detain him. The Arkansas Supreme Court reversed that decision, emphasizing that an officer must only suspect illegal activity, and the reasonableness of that suspicion depends upon the combination of factors known to the officer – not whether each factor, by itself, establishes criminal activity. Consequently, the Court held that the combination of factors known to the officers, including the high-crime character of the area, the apparent hand-to-hand transaction, and Davis's nervous, evasive behavior, gave rise to a reasonable suspicion that he was committing a drug-related offense.

# Have you seen me?

The Arkansas Attorney General's Office houses the Arkansas Missing Children Services Program (AMCSP), which serves as the main point of contact between Arkansas and the National Center for Missing and Exploited Children.

The program is designed to assist law-enforcement agencies with their investigations, provide training to investigatory agencies, distribute safety materials to the public, and assist families with a missing child.

AMCSP has a toll-free number (1-800-448-3014) for reports or sightings of missing children. A state-of-the-art computer messaging system allows data to be disseminated within minutes to other states or national agencies, including photographs of children. The Arkansas program can help law-enforcement agencies create posters of missing children and can post photographs on its Web site and the Web site of the National Center for Missing and Exploited Children.

If you have information about any of the children's photographs displayed in this newsletter, or if you would like more information about the AMCSP, call

**1-800-448-3014 or 501-682-3645.**



## **MORGAN NICK**

Missing: June 9, 1995  
Missing from: Alma, AR  
Birthdate: 9-12-1988  
Eyes: Blue  
Hair: Blonde



## **CLEASHINDRA HALL**

Missing: May 9, 1994  
Missing from: Pine Bluff, AR  
Birthdate: 3-30-1976  
Eyes: Brown  
Hair: Brown



## **TIFFANY LAFEVERS**

Missing: March 14, 2003  
Missing from: Bentonville, AR  
Birthdate: 6-07-1985  
Eyes: Blue  
Hair: Brown



## **TERRY MANESS**

Missing: May 30, 2002  
Missing from: Walnut Ridge, AR  
Birthdate: 8-30-1988  
Eyes: Brown  
Hair: Brown

## Office of Attorney General Mike Beebe

323 Center Street, Suite 1100, Little Rock, AR 72201  
1-800-448-3014 – (501) 682-1020  
[www.ag.state.ar.us](http://www.ag.state.ar.us)

EDITOR – Jenny Boshears

### EDITORIAL BOARD

David Raupp, Senior Assistant Attorney General

Mica Strother-Hicks, Assistant Attorney General

Vada Berger, Assistant Attorney General

Alicia Banks, Prevention and Education Instructor

First-Class Mail  
Auto

U.S. Postage Paid  
AR ATTY GEN OFF  
Permit No. 1106